

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GUADALUPE ROCHA-FERNANDEZ,
BOP #29255-298,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendants.

Civil No. 14cv0352 LAB (MDD)

**ORDER DISMISSING CIVIL
ACTION WITHOUT PREJUDICE
FOR FAILING TO PAY
FILING FEE REQUIRED
BY 28 U.S.C. § 1914(a) AND/OR
FAILING TO MOVE TO
PROCEED *IN FORMA PAUPERIS*
PURSUANT TO
28 U.S.C. § 1915(a)**

Plaintiff, currently incarcerated at the Giles W. Dalby Correctional Facility located in Post, Texas, and proceeding pro se, has filed a civil action pursuant to 42 U.S.C. § 1983.

I. Failure to Pay Filing Fee or Request IFP Status

All parties instituting any civil action, suit or proceeding in any district court of the United States, except an application for writ of habeas corpus, must pay a filing fee

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1 of \$400. *See* 28 U.S.C. § 1914(a).¹ An action may proceed despite a party's failure to
 2 pay this filing fee only if the party is granted leave to proceed *in forma pauperis* ("IFP")
 3 pursuant to 28 U.S.C. § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th
 4 Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

5 Plaintiff has not prepaid the \$400 in filing and administrative fees required to
 6 commence a civil action, nor has he submitted a Motion to Proceed IFP pursuant to 28
 7 U.S.C. § 1915(a). Therefore, the case cannot yet proceed. *See* 28 U.S.C. § 1914(a);
 8 *Andrews*, 493 F.3d at 1051.

9 **II. Conclusion and Order**

10 For the reasons set forth above, the Court hereby:

11 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the
 12 \$400 civil filing and administrative fee or submit a Motion to Proceed IFP pursuant to
 13 28 U.S.C. §§ 1914(a) and 1915(a); and

14 (2) **GRANTS** Plaintiff **forty-five (45)** days leave from the date this Order is
 15 filed to: (a) prepay the entire \$400 civil filing and administrative fee in full; **or**
 16 (b) complete and file a Motion to Proceed IFP which includes a certified copy of his trust
 17 account statement for the 6-month period preceding the filing of his Complaint. *See* 28
 18 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2(b).

19 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff
 20 with this Court's approved form "Motion and Declaration in Support of Motion to
 21 Proceed *In Forma Pauperis*." If Plaintiff fails to either prepay the \$400 civil filing fee
 22 or complete and submit the enclosed Motion to Proceed IFP within that time, this action
 23 shall remain dismissed without prejudice and without further Order of the Court.

24 DATED: March 3, 2014

Larry A. Burns

25 **HONORABLE LARRY ALAN BURNS**
 26 United States District Judge

27 ¹ In addition to the \$350 statutory fee, all parties filing civil actions on or after May 1, 2013,
 28 must pay an additional administrative fee of \$50. *See* 28 U.S.C. § 1914(a) (Judicial Conference
 Schedule of Fees, District Court Misc. Fee Schedule) (eff. May 1, 2013). However, the additional \$50
 administrative fee is waived if the plaintiff is granted leave to proceed IFP. *Id.*